IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.28234 of 2022

M.Maniammal ... Petitioner

Vs.

1.The Executive Engineer,
Avadi Municipal Corporation,
No.391, New Military Road,
Thirumalairajapuram,
Avadi, Chennai – 600 071.

2.The Revenue Officer,
Avadi Municipal Corporation,
No.391, New Military Road,
Thirumalairajapuram,
Aavadi, Chennai – 600 071.

3.R.Inbavalli ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to cancel the property tax assessment made in the name of the third respondent considering the petitioners' representation dated 19.08.2021 on merits and in accordance with law.

For Petitioner	: Mr.J.Ashok
For R1 & R2	: Mr.R.Gopinath, Senior Counsel
For R3	: Mr.T.Arivarasan

ORDER

The Writ Petition has been filed, seeking a direction to the second respondent to cancel the property tax assessment made in the name of the third respondent by considering the representation dated 19.08.2021.

2. It has been brought to notice that a similar Writ Petition in W.P.No.21369 of 2021 has been filed by the petitioner, seeking the same prayer, which reads as under:-

> *" To direct the third respondent to cancel the property tax assessment made in the name of the fourth respondent considering the petitioner's representation dated 19.08.2021"*

3. While considering the case of the petitioner in W.P.No.21369 of 2021, this Court has passed the following order:-

> *" Captioned writ petition has been filed with a mandamus*

prayer and the mandamus is qua third respondent to cancel the property tax assessment made in the name of the fourth respondent.

2.The fourth respondent is none other than the writ petitioner's sibling. The case of the writ petitioner is that she had let out the property that is subject matter of captioned writ petition to her younger sister (fourth respondent) and had thereafter gone to her native place to take care of her ailing mother-in-law and taking advantage of her absence, the fourth respondent had put up a superstructure. This is captured in paragraphs 2 and 3 of the writ affidavit which read as follows:

> *'2.I submit that the said property was let out for rent to my younger sister, the 4th respondent herein. The said property was assessed to tax and as such the property tax and water tax are assessed in the name of my husband Mr.K.Murugesan. I am paying the taxes regularly without any default. I have paid the local taxes as demanded by the 3rd respondent Corporation till the assessment year 2020-2021 on 13.10.2020. In the ongoing COVID pandemic situation and with a necessity to take due care of my*

90 years old mother-in-law, I had left to my native town Ariyalur during the pandemic time with a trust that the fourth respondent would take due care of my property. On account of my mother-in-law's bodily weakness, my stay at Ariyalur got extended.

3.I submit that I returned to Chennai and I approached the 4th respondent for collecting the rent amounts that were unpaid during the entire period of my stay at Ariyalur, which had a great shock inviting me. The 4th respondent, being my tenant had demolished the old building and had managed to put up a new superstructure in the place where the old structure existed. It is pertinent to state that it were the premises where the 4th respondent entrusted with in the capacity of a tenant. I raised my objections with regard to the illegal act of the 4th respondent taking a serious note of the illegal and unauthorised construction. The 4th respondent stood in a different attitude highly bent upon to illegally grab my property and had spoke harsh and

> *unparliamentary words against me. The 4th respondent has no title deed whatsoever so as to claim her ownership to my subject property.*

3.Ms.N.Devi, learned counsel for writ petitioner submits that notice to fourth respondent has since been issued, though it has not been placed before me as part of case file. Learned counsel submits that the notice is inter alia for recovery of possession.

4.From the averments contained in paragraphs 2 and 3 of the writ affidavit (extracted and elaborated supra), it will be evident that this is a matter which has to be taken up by way of civil suit and the writ petitioner will do well to pursue the notice which is said to have been issued i.e., notice inter alia for recovery of possession and file a civil suit.

5.This being an issue between the siblings who also have a contractual relationship of lessor-lessee (besides the blood relationship of siblings), it is best left to civil Court to decide the matter considering the factual issues involved.

6.As far as the property tax is concerned, such litigation between siblings cannot be a ground to deprive the local authority of the property tax which is entitled to *levy and collect the same.*

7.Captioned writ petition is disposed of as closed leaving open the right of the writ petitioner to pursue the civil suit. No costs.”

4. Now, the learned counsel appearing for the petitioner submitted that the present Writ Petition was filed after impleading necessary parties to the Writ Petition. However, on perusal of the order in W.P.No.21369 of 2021 indicates that the order was passed on merits after hearing both the parties and not as if the petitioner had arrayed improper parties as respondents. However, Writ Appeal was preferred against the said order and subsequently, it was withdrawn by the petitioner with liberty to implead proper parties. Hence, on the request of the petitioner, Hon'ble Division Bench of this Court had dismissed the Writ Appeal granting such liberty. It appears that such request made by the learned counsel appearing for the appellant / petitioner before the Hon'ble Division Bench of this Court is only with an intention to file a fresh Writ Petition and invite a fresh order from this Court superceding the earlier order passed by this Court in

W.P.No.21369 of 2021 dated 05.10.2021.

5. Even assuming that the present Writ Petition is filed after impleading necessary parties, this Court is not inclined to pass fresh orders in the present Writ Petition, since this Court had already passed order on 05.10.2021 in W.P.No.21369 of 2021 on merits. The said order still hold good for the present Writ Petition even subsequent to the impleading of different respondents as parties to the present Writ Petition and the petitioner can very well workout his other remedies before the Civil Court.

6. Accordingly, this Writ Petition stands dismissed. No costs.

06.11.2023

skr
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

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KRISHNAN RAMASAMY, J.

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